

PTO Form 1930 (Rev 9/2007)

OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77495503
LAW OFFICE ASSIGNED	LAW OFFICE 115
MARK SECTION (no change)	
ARGUMENT(S)	
<p>In response to the U.S. Patent and Trademark Office ("USPTO") final action dated January 11, 2009, Applicant provides the following information and arguments.</p> <p><u>I. Identification of Goods</u></p> <p>A. Applicant's Proposed Amendment</p> <p>In her final office action, the examining attorney determined that Applicant's proposed amendment to the identification of goods submitted in its response to office action on December 9, 2008 was unacceptable. In response to the requirement for an acceptable identification of goods, Applicant amends the identification of goods to the following:</p> <p style="padding-left: 40px;">Viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card, book, or calendar; <i>in International Class 28.</i></p> <p>Applicant respectfully requests that the examiner accept the proposed amendment, as the identification of goods is within the scope of the original goods description. According to TMEP § 1402.07(d):</p> <p style="padding-left: 40px;">If the applicant proposes an amendment to the identification of goods and services, and the examining attorney determines that the amendment is unacceptable, the examining attorney should refer to the identification of goods before the proposed amendment to determine whether any later amendment is within the scope of the identification. In such case, the applicant is not bound by the scope of the language in the proposed amendment but, rather, by the language of the identification before the proposed amendment.</p> <p>In this case, the examining attorney stated in her final office action that Applicant's previous amendment to the identification was "unacceptable." Therefore, according to the above section of the TMEP, the Applicant is not bound by the scope of the language in the proposed amendment submitted in the previous response to office action. Accordingly, the Applicant asserts that its current amendment to the identification of goods is acceptable, as this language is within the scope of the</p>	

goods description listed in the original application.

B. Examining Attorney's Proposed Amendment

If the examining attorney determines that the proposed amendment is unacceptable, then Applicant chooses to accept the identification of goods suggested by the examining attorney, with a slight modification, as listed below.

Toy viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card or book; *in International Class 28*.

The above goods description is highly similar to the identification of goods proposed by the examining attorney in her final office action. Therefore, the Applicant asserts that this modified description should be acceptable in the alternative to the Applicant's proposed amendment listed above.

II. Conclusion

Applicant respectfully requests that its proposed amendment to the identification of goods is accepted, as Applicant asserts that this amendment is proper. If the examining attorney fails to accept the proposed amendment, Applicant requests that the examining attorney's suggested identification of goods, as modified, be accepted. Should any outstanding issue remain, the examiner is encouraged to telephone the attorney listed below.

GOODS AND/OR SERVICES SECTION (current)

INTERNATIONAL CLASS	028
DESCRIPTION	
toy viewer for viewing printed media with elements that convey movement through non-electrical optical illusions sold as a component of a greeting card or book	
FILING BASIS	Section 1(b)

GOODS AND/OR SERVICES SECTION (proposed)

INTERNATIONAL CLASS	028
DESCRIPTION	
Viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card, book, or calendar	
FILING BASIS	Section 1(b)

CORRESPONDENCE SECTION

NAME	Kimberly A. Wingate, Reg. No. 43,776
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CITY	Kansas City

STATE	Missouri
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EMAIL	ipdocketing@lathropgage.com
AUTHORIZED EMAIL COMMUNICATION	Yes
SIGNATURE SECTION	
DECLARATION SIGNATURE	The filing Attorney has elected not to submit the signed declaration, believing no supporting declaration is required under the <i>Trademark Rules of Practice</i> .
RESPONSE SIGNATURE	/kaw/
SIGNATORY'S NAME	Kimberly A. Wingate
SIGNATORY'S POSITION	Attorney of record, Missouri bar member
DATE SIGNED	07/09/2009
AUTHORIZED SIGNATORY	YES
CONCURRENT APPEAL NOTICE FILED	YES
FILING INFORMATION SECTION	
SUBMIT DATE	Thu Jul 09 20:01:23 EDT 2009
TEAS STAMP	USPTO/RFR-12.200.214.2-20 090709200123519115-774955 03-430e51a16f8fc4ba1d79df fd338aa234b8e-N/A-N/A-200 90709195908961051

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OMB No. 0651-0050 (Exp. 4/30/2009)

Request for Reconsideration after Final Action**To the Commissioner for Trademarks:**

Application serial no. 77495503 has been amended as follows:

ARGUMENT(S)

In response to the substantive refusal(s), please note the following:

In response to the U.S. Patent and Trademark Office ("USPTO") final action dated January 11, 2009, Applicant provides the following information and arguments.

I. Identification of Goods**A. Applicant's Proposed Amendment**

In her final office action, the examining attorney determined that Applicant's proposed amendment to the identification of goods submitted in its response to office action on December 9, 2008 was unacceptable. In response to the requirement for an acceptable identification of goods, Applicant amends the identification of goods to the following:

Viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card, book, or calendar; *in International Class 28*.

Applicant respectfully requests that the examiner accept the proposed amendment, as the identification of goods is within the scope of the original goods description. According to TMEP § 1402.07(d):

If the applicant proposes an amendment to the identification of goods and services, and the examining attorney determines that the amendment is unacceptable, the examining attorney should refer to the identification of goods before the proposed amendment to determine whether any later amendment is within the scope of the identification. In such case, the applicant is not bound by the scope of the language in the proposed amendment but, rather, by the language of the identification before the proposed amendment.

In this case, the examining attorney stated in her final office action that Applicant's previous amendment to the identification was "unacceptable." Therefore, according to the above section of the TMEP, the Applicant is not bound by the scope of the language in the proposed amendment submitted in the previous response to office action. Accordingly, the Applicant asserts that its current amendment to the identification of goods is acceptable, as this language is within the scope of the goods description listed in the original application.

B. Examining Attorney's Proposed Amendment

If the examining attorney determines that the proposed amendment is unacceptable, then Applicant chooses to accept the identification of goods suggested by the examining attorney, with a slight modification, as listed below.

Toy viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card or book; *in International Class 28*.

The above goods description is highly similar to the identification of goods proposed by the examining attorney in her final office action. Therefore, the Applicant asserts that this modified description should be acceptable in the alternative to the Applicant's proposed amendment listed above.

II. Conclusion

Applicant respectfully requests that its proposed amendment to the identification of goods is accepted, as Applicant asserts that this amendment is proper. If the examining attorney fails to accept the proposed amendment, Applicant requests that the examining attorney's suggested identification of

goods, as modified, be accepted. Should any outstanding issue remain, the examiner is encouraged to telephone the attorney listed below.

CLASSIFICATION AND LISTING OF GOODS/SERVICES

Applicant proposes to amend the following class of goods/services in the application:

Current: Class 028 for toy viewer for viewing printed media with elements that convey movement through non-electrical optical illusions sold as a component of a greeting card or book

Original Filing Basis:

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

Proposed: Class 028 for Viewer for viewing printed media with elements that convey movement through non-electrical optical illusions where such media and viewer are sold as a component of a greeting card, book, or calendar

Filing Basis: Section 1(b), Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services as of the filing date of the application. (15 U.S.C. Section 1051(b)).

CORRESPONDENCE ADDRESS CHANGE

Applicant proposes to amend the following:

Current:

KIMBERLY A. WINGATE, REGISTRATION NO. 43
LATHROP & GAGE L.C.
2345 GRAND BLVD.
SUITE 2800
KANSAS CITY, MO 64108-2612

Proposed:

Kimberly A. Wingate, Reg. No. 43,776 of Lathrop & Gage LLP, having an address of
Suite 2800 2345 Grand Blvd. Kansas City, Missouri 64108-2612
United States
ipdocketing@lathropgage.com
816-292-2000
816-292-2001

SIGNATURE(S)

Declaration Signature

I hereby elect to bypass the submission of a signed declaration, because I believe a declaration is not required by the rules of practice. I understand that the examining attorney could still, upon later review, require a signed declaration.

Request for Reconsideration Signature

Signature: /kaw/ Date: 07/09/2009

Signatory's Name: Kimberly A. Wingate

Signatory's Position: Attorney of record, Missouri bar member

The signatory has confirmed that he/she is an attorney who is a member in good standing of the bar of the highest court of a U.S. state, which includes the District of Columbia, Puerto Rico, and other federal territories and possessions; and he/she is currently the applicant's attorney or an associate thereof; and to the best of his/her knowledge, if prior to his/her appointment another U.S. attorney or a Canadian attorney/agent not currently associated with his/her company/firm previously represented the applicant

in this matter: (1) the applicant has filed or is concurrently filing a signed revocation of or substitute power of attorney with the USPTO; (2) the USPTO has granted the request of the prior representative to withdraw; (3) the applicant has filed a power of attorney appointing him/her in this matter; or (4) the applicant's appointed U.S. attorney or Canadian attorney/agent has filed a power of attorney appointing him/her as an associate attorney in this matter.

The applicant is filing a Notice of Appeal in conjunction with this Request for Reconsideration.

Mailing Address: Kimberly A. Wingate, Reg. No. 43,776
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Kansas City, Missouri 64108-2612

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aa234b8e-N/A-N/A-20090709195908961051